IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3557 of 1987

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATVERLAL N JANI & Ors.

Versus

STATE OF GUJARAT & Ors.

Appearance:

1. Special Civil Application No. 3557 of 1987

MR JJ YAJNIK for Petitioners

MR LR PUJARI AGP for Respondents No. 1

MR JM BAROT for HS MUNSHAW for Respondent No. 2

MR JS UNWALA for PK JANI for Respondent No. 3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 11/10/2004

ORAL JUDGEMENT

Heard the learned advocates.

This petition under Article 226 of the Constitution of India was originally moved by five petitioners. The petitioners no. 6 & 7 joined the petition subsequently under Order dated 17th November, 2003 [Coram : H.K Rathod, J.] made on Civil Application No. 8132 of 2000. On perusal of the said order dated 17th November, 2003, I find that the prayer made by the applicants to be impleaded as petitioners in Special Civil Application No. 3557 of 1987 was rejected. However, the learned Judge directed that, "..Considering this fact, present application is allowed with a direction that present two applicants may be joined as respondents in main Special Civil Application No. 3557 of 1987." Inspite of the aforesaid direction, the said applicants have been joined in the present petition as petitioners nos. 6 & 7. In the circumstances, it is ordered that the names of the petitioners nos. 6 & 7, having been added to the cause title contrary to the aforesaid order dated 17th November, 2003, be deleted.

The petitioners claim that they were appointed by the erstwhile Sanand Municipality as Naka Karkoon. The said Sanand Municipality came to be converted as Sanand Nagar Panchayat under the provisions of the Gujarat Panchayats Act, 1961. The petitioners were allocated to the Sanand Nagar Panchayat. Thus, the petitioners were allocated servants of Sanand Nagar Panchayat. Relying upon the judgment of the Hon'ble Supreme Court in the matter of State of Gujarat vs. Raman Lal Keshav Lal Soni & Ors. [AIR 1984 SC 161], the petitioners have claimed benefit of revised payscales pursuant the recommendations made by Sarela Pay Commission and the Desai Pay Commission. The petitioners have also claimed benefits of promotion, seniority, pay fixation and the selection grade.

Learned advocate Mr. Yajnik appearing for the petitioners has, at the outset, submitted that pending this petition, the petitioners have been given the benefit of revised payscale under the aforesaid reports of the Pay Commissions and have been paid difference of amount of salary. From the records, it transpires that by communication dated 9th January, 1984 of the Deputy District Development Officer, District Panchayat, Ahmedabad, Sanand Nagar Panchayat was informed that pursuant to the judgment of the Hon'ble Supreme Court, fortysix allocated employees of the said Panchayat had

been given the benefit of the revision of pay and had been paid the amount of difference of salary. Alongwith the said communication is annexed a statement containing the names of the fortysix allocated employees and the amount of difference of salary paid to them. To me, it appears that the present petition has been preferred on non-existent cause of action. As recorded hereinabove, the amount of difference in salary was paid to the allocated Panchayat servants long before the date of the petition. As learned advocate Mr. Yajnik has admitted that the prayer with respect to the pay revision does not survive, the petition has become infructuous to that extent.

As to the claim for promotion and the selection grade, I am of the view that the petitioners have hopelessly failed in making out a case for promotion or selection grade. First, it is not stated which is/are the post/s to which the petitioners were appointed/allocated and to which post/s the promotion is sought; Second, whether the petitioners are eligible for such promotional post or the date on which they became entitled to such promotion. On perusal of the counter affidavit, it transpires that the petitioners were appointed as Clerks. They do not possess the qualification of SSC. Even though they were non-matriculate, they were promoted as Sr. Clerk by Resolution dated 1st July, 1984. Hence, it is not correct that the petitioners had not earned promotion in Nagar Panchayat and that they were stagnated, as averred by the petitioners. In absence of the relevant materials before the Court i.e. the post to which the petitioners have sought promotion, the eligibility for such promotion, etc., the claim for further promotion cannot be entertained. It should also be noted that this petition has been preferred in the year 1987 i.e., at the fag end when the petitioners were about to retire from service. As to the selection grade also, the petitioners are not specific. It is not stated in which cadre they have claimed selection grade; and whether or not the selection grade was admissible in such cadre.

In above view of the matter, the petitioners are not entitled to the reliefs prayed for by them. The petition is accordingly dismissed. Rule is discharged with cost.

{Miss R.M Doshit, J.}

Prakash*